

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

UNITED STATES OF AMERICA)
)
)
v.) **Case No.: 3:06cr126-WHA**
)
JOHN JENNINGS, II)

UNOPPOSED MOTION TO CONTINUE TRIAL

COMES NOW the Defendant, John Jennings, II, by and through undersigned counsel, Kevin L. Butler, and moves this Court, pursuant to 18 U.S.C. §§ 3161(h)(1)(A), (h)(1)(f), (h)(8)(B)(I), (h)(8)(B)(ii), and (h)(8)(B)(iv) for a continuance of his trial setting of January 8, 2007. In support of this motion, Defendant would show:

1. Mr. Jennings is charged with using the mail (or means of commerce) to knowingly induce a person who has not attained the age of 18 to engage in sexual activity in violation of 18 U.S.C. § 2251(a).
2. The defense asserts that at the time of the offense conduct and at the time of his arrest, Mr. Jennings was suffering from mental disease or defect that may have rendered him legally insane at the time of the offense and rendered his statements to law enforcement unknowing and unintelligent.
3. As a result, on December 7, 2006, this Court conducted a hearing to determine if Mr. Jennings had provided a knowing and intelligent waiver of rights and subsequent statement to law enforcement.
4. Prior to the hearing and at the defense's request, Dr. Catherine Boyer performed a psychiatric evaluation of Mr. Jennings. The evaluation was conducted over multiple days and the last

portion of her evaluation was completed on November 27, 2006.

5. As a result of other professional obligations and her call to jury duty in Lee County, Alabama during the week of December 4, 2006, Dr. Boyer was unable to complete her psychiatric report prior the December 7, 2006, hearing. Therefore, neither the defense nor the government has been provided with a copy of her psychiatric report and neither party was able to review the report prior the hearing.
6. Dr. Boyer's psychiatric report may be of material assistance to this Court during its review of the issues presented during the suppression hearing. Additionally, her report may be of assistance to the parties and the Court in determining issues of competence, insanity and the "reasonableness" of any proposed sentence.
7. Dr. Boyer has informed the defense her report will be finalized on December 15, 2006.
8. However, because the defense and government will then need a reasonable amount of time to review and analyze the report and this Court will need an opportunity to review whether information contained in the report is material to any issues presented (e.g. voluntariness of defendant's confession and competency), it is in the interest of justice to continue trial in this matter.
9. Requests for a continuance are addressed to the sound discretion of the trial court. United States v. Darby, 744 F.2d 1508, 1521 (11th Cir. 1984), reh. denied 749 F.2d 733, cert. denied 471 U.S. 1100 (1985). A continuance in order to allow defense counsel "the reasonable time necessary for effective preparation" for trial is one of the factors considered significant by the Speedy Trial Act. United States v. Davenport, 935 F.2d 1223, 1235 (11th Cir. 1991); 18 U.S.C. 3161 (h)(8)(B)(iv). The Eleventh Circuit has repeatedly recognized that a

continuance in order to provide adequate preparation by counsel serves the ends of justice. United States v. Goetz, 826 F.2d 1025, 1028 (11th Cir. 1987) (upholding, against speedy trial claim, a continuance of eighty days to allow new counsel to prepare for trial); United States v. Elkins, 795 F.2d 919, 924 (11th Cir. 1986), cert. denied 479 U.S. 952 (1986) (upholding against speedy trial claim, a continuance to allow new counsel time to prepare); United States v. Sarro, 742 F.2d 1286, 1300 (11th Cir. 1984), reh, denied 751 F.2d 394 (1984). In this case, the ends of justice will be served by allowing the defense adequate time to locate all information relevant and necessary to prepare a defense to the charges and determine Mr. Jennings' competence.

10. Additionally, pursuant to 18 U.S.C. §§ 3161(h)(1)(A), (h) (1)(F), (h)(8)(B)(I), (h)(8)(B)(ii), and (h)(8)(B)(iv), this Court has authority to continue trial to allow counsel time for the psychiatric exam to be completed in this case and for the resolution of Defendant's pending pretrial motions.
11. The United States, through Assistant United States Attorney Susan Redmond, does not oppose the granting of a continuance.

WHEREFORE, for the foregoing reasons, Mr. Jennings respectfully requests that his trial date be continued from the presently scheduled date of January 8, 2007.

Dated this 7th day of December 2006.

Respectfully submitted,

s/ Kevin L. Butler
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CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Susan Redmond, Esquire
Assistant United States Attorney
One Court Square, Suite 201
Montgomery, Alabama 36104

Respectfully submitted,

s/ Kevin L. Butler
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